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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,589	08/30/2001	Elisabeth Picard-Lesboucyries	211813US0	6408

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EXAMINER

JIANG, SHAOJIA A

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 01/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,589

Applicant(s)

PICARD-LESBOUEYRIES ET AL.

Examiner

Shaojia A. Jiang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This application claims priority to France 00/09403.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "type" in claims 1 and 22 is a relative term which renders claims 1-22 indefinite. The term "type" is not defined in the specification and claim. Therefore, the scope of claims is indefinite as to the composition encompassed thereby.

Claim Objection

Claim 3 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It is well settled that recitation of an inherent property of a composition or method will not further limit claims drawn to a composition or method. In the instant case, for example, "a modulus....." in claim 3 is an inherent property of the composition herein.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahms et al. (5,911,981, PTO-1449 submitted August 30, 2001) and Erilli et al. (5,629,279, PTO-1449 submitted August 30, 2001) and Ribier et al. (5,601,833, PTO-892).

Dahms et al. discloses a stable foaming composition in an aqueous medium comprising a surfactant system generating paracrystallin phase such as direct hexagonal phase for cleaning skin or hair including removing a greasy soil from skin or hair (see abstract, col.1 lines 5-16, col.2 lines 8-15 and 18-20, fig. 2, col.3 lines 6-13 and 63-66, col.10 lines 34-35, 45, 54-55 and col.13 lines 35-36). Dahms et al. also discloses that the surfactant system comprises one water-insoluble surfactant in about 75% weight (nonionic or amphoteric) and water soluble anionic surfactants, acyl lactylate (0.1-25% weight) and a sulfated anionic surfactant (see the structural formula at col. 3 lines 40-49, col.4 line 64, col.8 lines 55-60, and claims 1-16).

Erilli et al. discloses a stable foaming composition in an aqueous medium for cleaning skin comprising a surfactant system which comprises water-insoluble

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surfactants (nonionic or amphoteric) and water soluble surfactants (10-30% or 1-10% weight) within the instant claims. See abstract, col.2-8 and claims 1-9.

Ribier et al. discloses that a composition for the simultaneous treatment of skin such as protecting and nourishing including removing fatty substance in the skin comprises lipid vesicles (water-soluble) and active agents such as anti-oxygenated-free-radical agents and vitamins. See abstract, col.1 line22, col3 lines 50-51, col.4 lines 10-22, col.7 and claims 1-17.

The prior art does not expressly disclose that the employment of a surfactant system herein in combination with an active agent here in a composition and a method for cleaning greasy skin and or acne skin. The prior art does also not expressly disclose that the surfactant system is stable at up to 45⁰C. The prior art does also not expressly disclose the particular range of amounts of surfactants herein in the composition.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ a surfactant system herein in combination with an active agent here in a composition and a method for cleaning greasy skin and/or acne skin, and to optimize the surfactant system to be stable at up to 45⁰C, and to optimize the particular range of amounts of surfactants herein in the composition.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ a surfactant system herein in combination with an active agent here in a composition and a method for cleaning greasy skin and or acne skin since adding active agents herein such as salicylic acid to a foaming composition for cleaning skin is well known in the art. Moreover, the surfactant systems in the

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compositions of Dahms and Erilli are known to be useful in cleaning greasy skin.

Therefore, one of ordinary skill in the art would have reasonably expected that combining the surfactant system of Dahms or Erilli and an active agent known useful for the same purpose (i.e., cleaning or treating skin) in a composition to be administered would improve the therapeutic effect for cleaning/treating skin. Further, the teachings of Ribier et al. provide the motivation for the combination herein.

Since all composition components herein are known to be useful to treat skin, it is considered prima facie obvious to combine them into a single composition to form a third composition useful for the very same purpose. At least additive therapeutic effects would have been reasonably expected. See *In re Kerkhoven*, 205 USPQ 1069 (CCPA 1980).

Additionally, one of ordinary skill in the art would have been motivated to optimize the surfactant system to be stable at up to 45°C, and to optimize the particular range of amounts of surfactants herein in the composition because optimization of amounts of ingredients and their inherent properties is considered well within the skill of artisan, involving merely routine skill in the art.

Thus the claimed invention as a whole is clearly prima facie obvious over the combined teachings of the prior art.

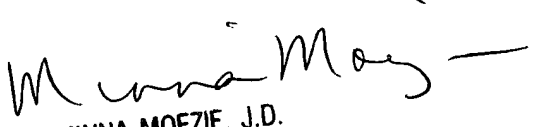
In view of the rejections to the pending claims set forth above, no claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

Shaojia A. Jiang, Ph.D.
Patent Examiner, AU 1617
January 11, 2002


MINNA MOEZIE, J.D.
SUPERVISORY PATENT EXAMINER
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